IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 3660 of 2007()

C.C.NO. 471/01 FROM CRL.M.P.NO.5488/99 OF ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

REVN. PETITIONER: REVN. PETITIONER

DR. MATHEW ABRAHAM, S/O. LATE
P.T.ABRAHAM, BELMONT, VALLAKKADAVU,
TRIVANDRUM.

BY ADV. SRI.S.SREEKUMAR
SRI.NAGARAJ NARAYANAN
SRI.A.S.SABU
SRI.SAIJO HASSAN
SRI.P.MARTIN JOSE

RESPONDENTS: 1ST RESPONDENT & STATE

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1. V.GOPALAKRISHNAN, S/O. VASUDEVA PANICKER, HOUSE NO.PRA 92, MADUTHALA BHAGAVATHY KSHETHRAM ROAD, POOJAPPURA P.O., TRIVANDRUM, NOW WORKING AS DEPUTY SUPERINTENDENT OF POLICE, KERALA STATE HUMAN RIGHTS COMMISSION, TRIVANDRUM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.R.P.No. 3660 of 2007

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Dated this the 26th day of October, 2007

O R D E R

When does a Criminal Court have the obligation to "briefly record its reasons' for dismissing a complaint under Section 203 Cr/P/C.? Does that obligation exist only when the complaint as such - in its entirety, against all accused and in respect of all offences, is dismissed? Will the expression "in each case" in Section 203 Cr.P.C. take in a case when the complaint is not dismissed as such, but is dismissed as against some accused or in so far as it relates to some offences? These are the questions to be considered in this revision petition.

2. To the vital and crucial facts first. Shorn of unnecessary details and avoiding reference to various steps and proceedings taken so far, the facts can be summarised thus: The complainant, a Surgeon, filed a complaint before the Magistrate raising an allegation that the first respondent, a Police Officer, had committed offences punishable, inter alia, under Sections 307 and 326 I.P.C. against him. Detailed enquiry under Section 202 Cr.P.C. was conducted and ultimately, the learned Magistrate passed the impugned order

dt. 7.4.2007, which reads as follows:

> " Complainant represented. Case taken on file as C.C. 471 of 2007 under Sections 342, 324 and 506(i)I.P.C. Issue summons to the accused by registered post for appearance on 23.8.2007."

3. The petitioner/complainant has come to this Court with this revision petition. He laments that the impugned order is not a speaking order at all. His grievance is that the order does not reveal to him whether the learned Magistrate has considered the allegations and materials placed before him to decide whether there is sufficient grounds for proceeding under Section 326 and 307 I.P.C. in the matter. Have the allegations been considered? Have the materials been adverted to by the learned Magistrate before passing the order? What circumstances, if any, weighed with the Magistrate to come to the conclusion that there is no need to proceed against the accused for the offences punishable under Sections 307 and 326 I.P.C.? Is it a case of omission by the learned Magistrate to consider that aspect? Is it a case where the Magistrate came to a conclusion that the proceedings for those offences need not continue? In as much as the impugned order lacks details, the same is liable to be set aside and the

matter deserves to be sent back to the learned Magistrate to pass an appropriate reasoned order, argued counsel.

4. A reasoned decision is the irreducible minimum requirement to satisfy the principles of natural justice. All authorities - whether judicial, quasi-judicial or administrative - are bound to consider the facts, evaluate the reasons and render decisions. Every decision must be prompted by a reason and must give way to a better reason. Judicial functionaries by instinct and training do and are required to give reasons for their decisions. The unsuccessful party is entitled to the satisfaction that his plea/case has been considered and accepted or rejected for valid reasons. He must have the satisfaction that he lost his case because the judicial functionary considered his case and for reasons did not accept the same. This is an axiom of sublimity of persons or institutions. Whether in personal life or in dispensation of justice the sublime activity of decision making is essentially an evaluation and assessment of reasons in support and against. Faith may transcend reasons but the process of secular decision making has to rest on the strong foundation of reasons.

5. The judicial institution has been able to maintain a higher profile and degree of acceptance among the polity basically because of this

obligation to give reasons for all its decisions. The obligation to give reasons and the knowledge that such reasons shall be subject to scrutiny at higher tiers has in no mean measure helped the judicial functionaries to maintain their sublimity and gain acceptance of the polity. The obligation to give reasons caters to the interests of transparency. It helps to maintain purity also. Nay, I may summarise that the moral authority behind every judicial decision lies in the process of reasoning that has preceded and the disclosure of such reasons in the decisions rendered. The best of judicial personnel do at times err grossly while making administrative and executive decisions, where there is no obligation to record reasons. I have only attempted to comprehend the process of decision making accountable to reasons and the sublimity of such process. A decision without reasons lacks the moral power and does greatly affect the credibility and acceptability of the decision. Appellate and revisional processes will be reduced to irrelevance if decisions were rendered without disclosure of the process of evaluation of reasons that preceded decision making.

6. Section 203 Cr.P.C. speaks of the obligation to give reasons. When proceedings are not terminated at the stage of Section 203 Cr.P.C. and the decision is to proceed further, no reasons need be given. But when

proceedings are prematurely terminated at the threshold by an order of dismissal of a complaint under Sections 203 Cr.P.C., a Magistrate has the express obligation under the Code to record reasons. I extract Section 203 Cr.P.C. below:

> **S. 203. Dismissal of complaint**:- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion thatthere is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."
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> (emphasis supplied)

The obligation to give reasons for dismissing the complaint in every such case of dismissal insisted by Section 203 Cr.P.C. is paramount and not negotiable.

7. Precedents galore to show that an order of dismissal of a complaint as such in its entirety without giving reasons is a void and futile exercise. Appellate or revisional powers must promptly be invoked against such orders, which do not give reasons. But we have a case on hand, in which the complaint is not dismissed as such in its entirety, but is dismissed

only in respect of some of the offences alleged in the complaint. Of course, the learned Magistrate has not used the expression "dismissed" and has not specified that the complaint in so far as it relates to offences under Sections 307 and 326 I.P.C. shall stand dismissed. But that obviously is what the impugned order does. That the language employed is not specific or explicit cannot alter the nature of the order. It is easy to contemplate a slightly different situation, where a complaint is filed alleging that a number of persons have committed offences and the Court/Magistrate choosing to proceed against some and not all. In such an analogous case also, it is to be held that the complaint virtually stands dismissed in so far as such persons are concerned, but the court is proceeding with the complaint in so far as certain others are concerned. Then also, the order taking cognizance and issuing process against some of the accused under Section 204 Cr.P.C. must be held to amount to an order of dismissal under Section 203 Cr.P.C. so far as the others are concerned.

8. There is nothing in the language of Section 203 Cr.P.C., considered in the background of the purport, object and the semantics employed to come to a conclusion that the Magistrate has no obligation to give reasons when the complaint in so far as it relates to some of the many

accused persons and in so far as it relates to some of the many offences alleged is dismissed. The expression 'dismiss the complaint' in Section 203 Cr.P.C. must therefore be held to cover all cases where the complaint is dismissed in part also.

9. It will not be in apposite in this context to note that Section 203 Cr.P.C. specifically saddles the Magistrate with an obligation to briefly record his reasons for dismissing the complaint “in every such case”. The expression “in every such case”, according to me, must, from the text and context receive a wider interpretation to hold within its sweep not only dismissal of the complaint as such in its entirety, but also dismissal of complaint in part - in respect of some of the many accused or in respect of some of the many offences alleged. To take a contra view, would be negation of the principle of natural justice - that a person is entitled to know why a decision has been rendered against him.

10. It was submitted that there is no binding decisions of the Supreme Court or this Court on this specific aspect. I was unable to trace any. The learned counsel for the petitioner and the learned Prosecutor were requested to research. My attention has not been drawn and I have not been able to come across any specific binding decision on this specific aspect.

Decisions galore on the question that a complaint cannot be dismissed without giving reasons. The learned counsel for the petitioner Sri. S. Sreekumar, after research, has pointed out that a decision of the Andhra Pradesh High Court in **Kesari Parabhakara Rao** v. **State of Andra Pradesh** (1995 Crl.L.J. 1736) has also come to the same conclusion on the basis of the same reasons as arrived at by this Court.

11. I am satisfied, in these circumstances, that the learned Magistrate has erred grossly in not rendering a speaking reasoned decision as to why he was not taking cognizance of the offences alleged under Sections 307 and 326 I.P.C. and is virtually dismissing the complaint in so far as it relates to those offences. The impugned order therefore does warrant interference. This revision petition succeeds.

12. In the result:

(a) This revision petition is allowed.

(b) The impugned order dt. 7.4.2007 is hereby set aside.

(c) The learned Addl. Chief Judicial Magistrate, Trivandrum is directed to pass fresh orders under Section 203/204 Cr.P.C. afresh on merits in the light of the observations and conclusions made above.

13. As the dismissal is at the stage of Section 203 Cr.P.C., where the respondent/accused has no right to be heard, I have not chosen to issue notice to the respondent/accused. I may however hasten to observe that I have not intended to express any opinion on the question whether not issuing process under section 204 Cr.P.C. to the accused for the offences under Sections 307 and 326 I.P.C. is justified on merits or not. The materials must be considered by the learned Magistrate and appropriate decision taken.

(R. BASANT)
Judge

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